

**REMARKS/ARGUMENTS**

Claims 40, 42-44, and 62-71 are pending. By way of this Amendment, claims 42, 44, 45, 47, and 58-61 are cancelled without prejudice or disclaimer and claims 40, 43, 46, 62 and 65 are amended. Reconsideration and allowance in view of the above amendments and the following remarks are respectfully requested.

Entry of this amendment is proper under 37 C.F.R. §1.116 as the amendments at least reduce the issues for appeal by addressing and overcoming the rejection under 35 U.S.C. §112, first paragraph, and by providing the claims objected to as being allowable if rewritten in independent form in condition for allowance. Entry of this amendment is thus respectfully requested.

Claims 40-45 were rejected under 35 U.S.C. §112, first paragraph. Although Applicants respectfully resubmit that the term “usage indicator” is fully supported by the application as originally filed, for example, at paragraphs [00101] - [00107] and [00132] - [00135], claim 40 has been amended to recite that at least one of the frame, cushion and the headgear includes an aging characteristic to indicate a usage condition of the mask assembly. This recitation is supported, literally verbatim, at, for example, paragraph [00101] and [00102].

Moreover, claim 40 has been amended to include the features of dependent claim 45, and intervening claim 42. Thus, claim 40 is allowable.

Reconsideration and withdrawal of the rejection of claims 40-45 under 35 U.S.C. §112, first paragraph are respectfully requested.

Applicants appreciate the indication that claims 43-45, 47, 48, 62-67, 69 and 70 would be allowable if rewritten in independent form, including all of the limitations of the base claim and

any intervening claims. By this amendment, claims 46, 62 and 65 have been amended accordingly.

In view of the above amendments and remarks, Applicants respectfully submit that all of the claims are allowable and the entire application is in condition for allowance.

The Commissioner is authorized to charge the undersigned's deposit account #14-1140 in whatever amount is necessary for entry of these papers and the continued pendency of the captioned application.

Should the examiner believe that anything further is desirable to place the application in condition for allowance, the examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

**NIXON & VANDERHYE P.C.**

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